

October 18, 2016

VIA ECFS

EX PARTE NOTICE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106

Dear Ms. Dortch,

On October 14, 2016, Nick Alexander of Level 3, Grant Spellmeyer of US Cellular, Ivana Kriznic of Orange Business Services US, Inc., and Angie Kronenberg and the undersigned counsel of INCOMPAS (collectively, the “INCOMPAS representatives”) met with Nick Degani of Commissioner Pai’s Office. On October 17, 2016, Nick Alexander of Level 3, Ivana Kriznic of Orange Business Services US, Inc., Gegi Leeger of XO Communications, Linda Cicco of BT, and Angie Kronenberg and the undersigned counsel of INCOMPAS met with Travis Litman of Commissioner Rosenworcel’s Office. During these meetings, the INCOMPAS representatives discussed the Commission’s broadband privacy rulemaking in the above-referenced docket.

Throughout this proceeding, INCOMPAS has suggested that in order to maximize harmonization between the privacy rules for broadband Internet access service (“BIAS”) and traditional telephone service and interconnected VoIP service, the Commission should provide carriers with an exemption for the provision of service to enterprise customers from subpart U of the Commission’s rules.¹ The INCOMPAS representatives reiterated their support for this proposal and noted that an enterprise customer exemption would further align the treatment of BIAS and services sold to business customers because BIAS is, by definition, a mass-market service. INCOMPAS’s members believe they can address their customers’ privacy-related needs as well as the Commission’s core privacy principles of transparency, choice, and security for their enterprise customers. Furthermore, the INCOMPAS representatives explained that carriers serving enterprise customers would benefit from the flexibility such an approach would offer. We also noted that carriers currently provide their services via a variety of methods. Some have negotiated contracts, others use standard order forms, and the Commission’s Order should provide some flexibility in satisfying any contractual requirements the Commission might be

¹ See Letter from CTIA, INCOMPAS, Level 3 Communications, LLC, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 16-106, at 1 (filed Sep. 23, 2016).

considering for the enterprise customer exemption, including by reference to a URL setting forth the carrier's policies in detail.

The INCOMPAS representatives commended the Commission for embracing an approach that takes into consideration the sensitivity of information being shared for its opt-in customer consent regime, but explained that the inclusion of web browsing history and app usage history could severely limit the ability of our members to innovate and market new products and services. With respect to the inclusion of web browsing and app history usage as categories of sensitive information, we explained that the Commission could take a more tailored approach that would see the inclusion of web-browsing for the FTC's five categories of sensitive information, or requiring opt-in for marketing based on search terms. Several of our members already participate in this approach, known as "white listing" in which websites are categorized for marketing purposes based on the determination on the front end that they are non-sensitive (*e.g.*, URLs that meet the criteria of "sports lover" or "furniture shopper"). This means that URLs with sensitive information do not get filtered through to be part of the advertising program. We explained that our members have more incentive to be conservative with their website categorization process so as not to risk losing customers. We asked the Commission to consider a narrower definition of sensitive information proposed by the association in a September 16th *ex parte* letter which is consistent with the FTC's categories of sensitive information for consumer privacy.²

We also asked the Commission to consider an implementation period of 12 to 18 months which would provide carriers with the time necessary to make adequate adjustments and preparations. While carriers already have sufficient privacy practices in place, the scope of the changes contemplated by the Commission would require these providers to make significant revisions to their policies and internal operations.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced docket. Please do not hesitate to contact me if you have questions about this submission.

Respectfully submitted,

/s/ Christopher L. Shipley

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cc: Nick Degani
Travis Litman

² See Letter from Christopher L. Shipley, INCOMPAS, to Marlene H. Dortch, FCC, WC Docket No. 16-106, at 2 (filed Sep. 16, 2013) (defining "sensitive customer proprietary network information" as individually identifiable children's, financial account, health, and precise geolocation information).